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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,794	02/20/2002	Isabelle Rebeaud	14926	7036

7590 09/20/2005

Scully Scott Murphy & Presser  
400 Garden City Plaza  
Garden City, NY 11530

EXAMINER
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TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 09/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/937,794

Applicant(s)

REBEAUD, ISABELLE

Examiner

Lien T. Tran

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 and 8-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 8-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Claims 1, 4, and 8 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In the amendment filed 9/8/05, applicant amends the claims to includes the limitations ' borders being distant to one another, distant borders and distant top and bottom borders". These limitations are not supported by the original disclosure. The specification does not disclose that there is a distant between the borders. In fact, page 6 line 15 discloses " substantially juxtaposed borders". Figure 1 shows juxtaposed borders.

Claims 1, 4 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the phrase " being distant to one another" is indefinite because it is not clear what applicant intends to claim. The same line states " juxtaposition of the top and bottom borders"; how can the borders be both juxtaposition and distant to one another". Also, the borders are formed by folding one portion of the dough over the other portion; thus, it is not clear how a distance can form.

Claim 4 essentially has the same problem as claim 1. Additionally, the phrase " the distant borders" is unclear because the previous lines of the claim have not set forth any distant borders.

Claim 8 has the same problem as claim 1.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Persi in view of Viviano et al.

Persi discloses a method of making a pizza food product. The method comprises the steps of shaping a dough into a rectangular shape, placing pizza ingredients along the central portion of the dough, folding the dough along its longitudinal length such that the long edges are in abutment, pressing the edges against each other so as to tight seal the ingredients and heating the filled dough product. The cooked product is packaged in suitable packaging material. (see columns 3-4)

Persi does not teach folding the dough after it is cooked and coating the edge with an edible paste of starch. Also, the Persi method comprises the additional step of forming a toroidal shape after folding the dough.

Viviano et al disclose a method of making filled food product. They teach to apply food starch to dough layers to help the dough regions to stick to each other. (see col. 6 lines 10-12)

It would have been obvious to one skilled in the art to omit the step of bringing the edges together to form a toroidal shape if one wants to make a rectangular shape product. Such step only affects the shape of the product and not the type of product. As to the folding after cooking, it is well known in the art to form pocket products by folding the dough over itself, this is commonly done when making calzone, turnover, pie etc. It is common to fold raw dough because it gives better sealing.

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However, cooked dough can also be folded. For example, when making wafer, or ice cream cone, the dough is shaped after it is cooked. The folding after cooking or before cooking gives the same product. In cooking, it is not uncommon to use alternative steps to make the same product. The cooking of the product in an open face manner gives the advantage that the filled ingredients will be cooked in a shorter amount of time because they are not enclosed within the dough shell. Thus, it would have been obvious to one skilled in the art to fold the dough after cooking if one wants to reduce the cooking time. It is well known that cooked dough will not stick to each other as well as raw dough; thus, it would have been obvious to one skilled in the art to use an adhesive when sealing a cooked dough. Starch is well known to be used as adhesive as shown by Viviano et al. It would have been obvious to one skilled in the art to use starch as shown by Viviano et al to seal the edges of the dough layers when the dough is folded after cooking. It would also have been obvious to use flour as the alternative adhesive because flour contain starch. As to the distant between the edges, it is unclear what applicant means by this and the specification does not disclose any distance between the borders of the dough layers. In fact, claim 4 recites juxtaposition of the top and bottom borders. If applicant means the distance created by the starch paste, then it is obvious the Persi product will have such distance when the starch paste is used to seal the edges.

Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Viviano.

Viviano et al disclose a filled pocket dough product. The product is formed by folding one portion of the dough over another portion to form a pocket enclosing the filling. The product is baked. In addition to other means of minimizing seal breaches, Viviano et al teach to apply food starch to dough layers to help the layers to stick to each other. ( see col. 3 lines 6-24, col. 6 lines 5-11)

The forming of the pouch in the hot fold in hot state by folding and rolling after cooking is a difference in processing steps which do not determine the patentability of the product. The Viviano et al product is the same product as claimed; the product has a cordon of edible paste because Viviano et al teach to apply layer of food starch between the dough layers. As to the distant between the edges, it is unclear what applicant means by this and the specification does not disclose any distance between the borders of the dough layers. If applicant means the distance created by the starch paste, then it is obvious the Viviano et al. product has such distance when the starch paste is used on the dough layers. As to the folding as recited in claim 10, it would have been obvious to one skilled in the art to use other fold depending on the look wanted for the product. The folding of longitudinal border and lateral borders to enclose the filling is well known in the art. This is done in making pastries product containing filling.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

September 16, 2005

  
LIEN TRAN  
PRIMARY EXAMINER  
